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GENERAL AVIATION REVITALIZATION ACT PANEL DISCUSSION

DANIEL DONNELLY, JOHN HOWIE, KATHRYN J. HUMPHREY,
CHARLES T. HVASS, ROBERT PARKS, TOM WAKEFIELD,
AND JOHN YODICE

MR. DONNELLY: "Except in this topsy-turvy land, you cannot die before you are conceived, or be divorced before you ever marry, or harvest a crop never planted, or burn down a house never built, or miss a train running on a nonexistent railroad. For substantially similar reasons, it has always heretofore been accepted, as a sort of logical 'axiom,' that a statute of limitations does not begin to run against a cause of action before that cause of action exists, that is, before a judicial remedy is available to a plaintiff." Thus spoke Judge Frank of the Second Circuit of 1952 in *Dincher Against Marlin Firearms Company*.

My name is Daniel Donnelly. I will be moderating this panel, and the panel, as all of you are aware, is a discussion of the General Aviation Revitalization Act (GARA), signed by President Clinton on August 17, 1994.

I do not think I have to tell you what the Act does, but let me just state briefly that the Act bars any cause of action against the manufacturer of a general aviation aircraft once that aircraft is eighteen years old.

It also provides the same protection to the manufacturer of replacement parts. The Act has four exceptions: the knowing misrepresentation and concealment exception; the medical transport exception; persons not aboard the aircraft exception; and the written warranty exception.

This panel will explore the scope of the Act, the rationalization for the Act or the reasons underlying its passage, and we will also explore whether the Act is, in fact, revitalizing general aviation.

I would like to introduce the panelists at this time. Tom Wakefield is vice president, general counsel and secretary of the Cessna Aircraft Company, and he has been a member of the

product liability section of General Aviation Manufacturers Association for many years. (It was Russ Meyer of Cessna who was a vanguard in obtaining the passage of the General Aviation Revitalization Act.)

Kathy Humphrey is a partner at Dykema Gossett in Detroit, Michigan. Her practice focuses on product liability, and for fifteen years she has been defending general aviation manufacturers and component manufacturers in the field of general aviation.

John Yodice is the senior partner of Yodice Associates and is general counsel for the Aircraft Owners and Pilots Association (AOPA), the organization which, through its president, Phil Boyer, was also a vanguard of getting the General Aviation Revitalization Act passed.

Charlie Hvass is a member of the firm of Hvass, Weisman & King, of Minneapolis, Minnesota. He is a member of the bars of Minnesota and North Dakota and was a former chairman of the aviation section of the Association of Trial Lawyers of America. In addition, he is a fellow of the International Society of Barristers. He was former chairman of the Aviation and Space Law Committee on TIPS of the American Bar Association, and he is an active pilot. Needless to say, his comments will be different from the comments made some of the panelists.

John Howie is a member of the firm of Howie & Sweeney. He is a Texas trial lawyer known throughout the United States, as are all of these panelists. He is a fellow of the International Academy of Trial Lawyers. He has served as chairman of the aviation section of the Association of Trial Lawyers of America, and he is a former Navy pilot.

And last, but certainly not least, is Bob Parks from Haggard, Parks & Stone in Coral Gables, Florida. He is a member of the Florida Bar, fellow of the American College of Trial Lawyers, fellow of the International Academy of Trial Lawyers, the American Board of Trial Advocacy and the International Society of Barristers.

The format which we hope to follow is as follows: Each panelist will make a brief statement relating to the act, either for it or against it, and say whatever the panelist wishes to say concerning the act. That will be followed by a scorching answer from the other side of the panel followed by a very aggressive and devastating rebuttal from the side that initially spoke.

And I hope that we can stir up controversy here. Before any of these panelists showed up here this morning, they were all

subjected to a magnetometer search, so there are no weapons here, and consequently we hope that we can be civil.

So what I would like to do is start by calling on Tommie Wakefield for his presentation in chief.

MR. WAKEFIELD: Thank you, Dan.

GARA has had a dramatic impact. As envisioned by Congress, the passage of the General Aviation Revitalization Act has resulted in claims reduction for aircraft manufacturers. By the end of 1994, 389,975 commercial general aviation aircraft had been manufactured in the United States and GARA barred lawsuits from seventy-six percent of this fleet. By the end of 1995, GARA's passage essentially barred lawsuits from eighty percent of this fleet. By 1996, GARA essentially barred lawsuits from eighty-four percent of the manufactured fleet.

My educated guess is that the number of new lawsuits being received by aircraft manufacturers on annual average has dropped well below fifty percent of the annual average of lawsuits received for the five-year period prior to GARA's passage.

The passage of GARA has also resulted in jobs and the revitalization of the general aviation aircraft industry. On August 18, 1994, one day after the passage of GARA, Russ Meyer confirmed, once again, that Cessna would restart some of its single-engine aircraft lines.

On December 21, 1994, Cessna selected Independence, Kansas, as the site of its new single-engine manufacturing plant. In 1995, Cessna began construction a \$40 million single-engine manufacturing facility in Independence, Kansas. The grand opening of the facility occurred on July 3, 1996.

Cessna also constructed a million dollar training facility at the Independence Community College. The first 1997 production model, 172 Skyhawk, was delivered on January 18, 1997, to Mrs. Howser, the AOPA drawing winner.

The first 1997 production model 182 Skylane will be soon delivered to AOPA. The Model 206 and the T-206 aircraft will be certified by Cessna in 1997. Cessna will manufacture approximately eight to 900 aircraft in Independence in 1997 and approximately 2000 aircraft in 1998.

Approximately 1000 jobs will be created at Cessna's facility in Independence. In fact, Cessna has already hired 400 employees at Independence today. Approximately another 1000 jobs will be created in Wichita as a result of the revitalization of the single-engine piston aircraft production.

The other positive effects of GARA have included new Piper Aircraft, Inc., in 1995 emerging from bankruptcy protection and increasing its employment and production by thirty percent.

MR. DONNELLY: Tom will have more to say later on, but we are trying to stick to a format so everyone gets a chance to speak. So now, we will call for a devastating rebuttal from—or answer from Mr. Hvass.

MR. HVASS: I will take it first. I am Charlie Hvass, Jr. I think the three of us were the chief lobbyists for the Association of Trial Lawyers of America on this bill. I know we made the appearances before the Senate and the House.

The first thing I want to say is that the lobby—the lobbying effort by the industry was very well done, but what happened over the ten years, and the reasons advanced by the industry to pass GARA do not now, after GARA, hold up as the reasons for general aviation decline.

Let me give you some examples. The first thing that was claimed was that it cost \$70,000 to \$100,000 per aircraft to insure the aircraft, and the implication was that if GARA was passed, aircraft prices would go down. In fact, if you look across the line, the Model TLS, after GARA, went up \$70,000. The Malibu went up \$181,000. The Beech Baron went up \$71,000.

After that, when they discovered that they did not have the insurance information after 1985, we began to talk about jobs lost, and the claim was that 100,000 jobs were lost. In fact, if you look at the employment for the county where Wichita is located, employment was actually going up at the time. It was declining in the general aviation manufacturing industry, but what we just heard from Cessna in their own press releases indicates that there will be up to 600 jobs by this June.

Piper has gone up, I think it has 150 to 200 jobs, and for that we have traded the claims of now eighty-four percent of the aircraft fleet. There was a claim that safety would be advanced, but that eighteen-year-old aircraft had proven itself. However, I have not seen Cessna 411s growing longer rudders. I have not seen the solutions to the 210 fuel system. We have not seen a cure for the problems of the Cheyenne or the flat spins of the Baron, all cases you are very familiar with.

So GARA has not had the effect that it was supposed to have. There was a claim that exports were being traded, that American manufacturers would be overwhelmed by Japanese and French imports.

I do not know if you have been out to your airport recently, but I do not see a lot of Trinidad DeBagos. And certainly, the Japanese's certification—I think we have an engine certified from Lexus—has been the entire extent of the Japanese invasion in the general aviation market from the mid-80s on, and that was one of the claimed reasons. What we postulated on behalf of AOPA, what a Cessna engineer concluded and what others have concluded, including an economist at the University of Illinois, is that the reason for decline in general aviation is, first of all, a decline in the pilot population.

We are now at less than half of the student certificates we had at the peak. The ratio of airplanes to pilots has gone from seven to one to three-and-a-half to one. The number of new private pilots last year was 27,000, and post-GARA, Phil Boyer, president of AOPA, said in accepting that first new 172 that what we have is a \$5 billion industry that spends nothing on pilot training. That was the AOPA response to Cessna when they got the 172, according to their press releases.

We have an aging pilot population. Post-World War II pilots, post-Korean War pilots, those with the GI benefits that learned to fly, and those who learned to fly in the service are now retiring and dropping out of flying.

MR. DONNELLY: Charlie, I think I am hearing rumblings from some of the panel. Is there anyone who would like to address these statements?

MR. WAKEFIELD: Interestingly enough, if you compare a 1986 172 equipped as the 1997 172s are and you escalate the price by inflation, you will find that the 1997 price is \$3,000 cheaper than the 1986 as it was escalated.

If you look at jobs—Charlie talked about Cessna and Piper. What about all of the engines manufactured, what about all of avionics manufactured, what about the FBOs out there that will be servicing these airplanes for the next many years?

These are the jobs that continue to be increased out there. What about all of the vendor products that are related? You cannot limit it to just Cessna and Piper as he is trying to do.

Exports will be increased. We anticipate that exports of Cessna aircraft will be as high as thirty to forty percent after the production gets going. You cannot draw up a bill one day and start manufacturing the very next day.

We did not have a plant to manufacture. You have got to build a plant first. You have got to hire the people first to build

the airplanes. We have done that. We have committed ourselves, over \$40 million in facilities. We have hired people. We are in the process of hiring more people. The Act is working.

MR. DONNELLY: John Howie?

MR. HOWIE: Sure. When we had the opportunity to speak to Congress on this bill, I suggested that it was tragic because this bill is a major step backwards, and if passed, and now that it is passed, it is really nothing more than government subsidy of mediocrity, because Wichita makes a product that supposedly is going to last for forty years. Yet they are saying after eighteen years, we want to be free from it and you have to purge this evil.

The Plaintiffs' Bar has been accused of running to Wichita and stopping their production lines. I have even heard it suggested that the bad weather in the winter in Wichita was due to the Plaintiffs' Bar coming up there and doing what they are doing at Cessna and Beech.

But now that it has passed, I have not seen the weather improve and I have not seen a lot of product improvement. The 172 that I saw on the string up there looked remarkably similar to a 172 that I was flying twenty-five years ago.

What we have here is an industry that has changed remarkably. It is great that they are going to make 2000 airplanes, but who is going to buy them? Who is going to put down that kind of money on the same old airplane when you can go out and get the after-market modifications on an old 172, put some new avionics in it and have basically the same airplane?

We have cured neither problem. I sat down with some ladies a while back and—and it was unfortunate because they were in an airplane—their spouses were in an airplane that was nineteen years old—just barely nineteen years old.

No problem. It had proven itself over those nineteen years to consistently have those problems. Yes, they had been in the fleet for eighteen years. They had proven themselves and that airplane from day one had a problem that had manifested itself throughout that period of time.

But we sat down and we said, gee, it is nice but we cannot help you unless we can prove that it was air accident where the airplane fell on you or there was fraud or there was a written warranty. None of those things are going to be there. And they said, that is a dumb rule. Who passed it?

We said, your senator was one of the ones that was sitting up there on that transportation subcommittee. They said, what can

we do about that? I said, nothing, as a practical matter, because this was a bill that was lobby-driven. It has not cured one thing.

It has created more jobs, perhaps. Or, were those jobs created because of market forces that were there? They did not just kick off that production line the day after the bill was signed. They saw a need that was developing and they took this as a lobbying opportunity. We pushed the thing with jobs because that is what the focus groups were saying they needed to sell the bill.

MR. DONNELLY: Thank you very much. John does not want to be seen here so—

MR. YODICE: I am hoping you will give me my opportunity.

MR. DONNELLY: He is going to get his opportunity to make his statement in chief. But, Kathy, would you like to answer this—John's comment?

MS. HUMPHREY: Well, I will answer it and then I will shift gears a little bit. I will answer it by saying that this problem was not created overnight; and it is not going to be solved overnight. We are discussing here a bill that was signed a little more than two years ago.

And certainly, I think it is true of the Defense Bar, we tend to take the long view of things, and I would certainly posit that, with respect to the problems created over the past several decades, it is not going to get solved overnight by one bill that speaks properly, I believe, to one portion of the problem. There may be other things in the equation that can and should be addressed by other means, other than perhaps legislation.

I want to shift gears a little bit, though, and talk about how GARA is being implemented and how it ought to be implemented in the courts, given that it does exist, has been signed, and is available to defendants.

There is obviously a lot of creative lawyering going on out there by the Plaintiffs' Bar trying to resist the application of GARA in specific cases. And there are attempts being made to find many different pegs on which to hang hats in order to allow a case to proceed.

I bring you the defense perspective on how to make sure that GARA is, in fact, implemented by the courts as was intended by Congress and to allow it to continue to function as a statute of repose.

For one thing, GARA is most useful and best carries out its purpose if it cuts those claims off that are intended to be cut off

early in the litigation; that is, at the summary judgment or the first responsive pleadings stage. To do that, the courts really have got to make sure that they are looking at the pleadings because as you all know, GARA has a requirement not simply of proof, but of pleading.

If the judges do not look carefully at the pleadings, at the allegations in the pleadings, and determine whether they measure up to the strict requirements of GARA, then obviously the purpose of GARA in avoiding litigation is not going to be carried out.

There is at least one plaintiffs' firm that is trying a fairly enterprising argument in trying to avoid the application of GARA. The word "knowing" is attached to the word "misrepresented" in the fraud exception. But because it appears several words distant from the other two words, "concealed" or "withheld," they are arguing that the requirement of knowledge applies only to the misrepresentation portion of the statute. They argue that if a manufacturer concealed or withheld, *without* knowledge that it was doing so, and if that inadvertent withholding or concealment can be pleaded and proven, then GARA would not bar the suit.

That is an argument that we have faced in Michigan and that has absolutely no basis in proper statutory construction and in the history of the statute, but nevertheless, it is one with which the courts are grappling.

I can report to you that in Michigan, those judges who have faced that argument or similar arguments have found it not to be very persuasive, but that is an indication of the kinds of things that the courts are being asked to look at in order to avoid the application of GARA.

MR. DONNELLY: May I interrupt you, Kathy?

MS. HUMPHREY: Yes.

MR. DONNELLY: Do I have any response from Bob Parks?

MR. PARKS: Let me underscore what John Howie said. In order to talk about this act, you have got to approach it from the standpoint that this is not—regardless of what Tom Wakefield and the people at Cessna and Beech will try to tell you—an act that was done for the economic revitalization of an industry.

This was tort reform pure and simple. That is what it is. It is tort reform. It has nothing to do with the economics of the airlines. It has nothing to do with engine manufacturers and fixed-

base operators. It has to do solely with the attempt to restrict access to the courts, period. That is where we are.

You can go through the gobbledygook of all of these statistics about how you can factor your '77 plane up to '97, and it only turns out to be \$3,000 more expensive or \$3,000 cheaper or whatever it is. That is just simply not the issue here.

The issue is that the bill has been passed, and it was done cunningly and very effectively, and sold as an economic measure for an industry which had brought upon itself, through, as John says, mediocrity at best, a pretty sorry record.

There is no guarantee that that is going to change, so we need to cast it in the light of let us start talking about it from a tort reform standpoint instead of getting into statistics.

The interesting part is that—there was an interesting article in the AOPA of pilots through December 1996, just a couple of a months ago. AOPA, and I think probably all of us as members, was the stalking force for the industry in trying to get GARA passed, and now three years and some months after it is over, the editor's view from Thomas Haynes in December 1996 says that manufacturers, however—well, it says some pilots were disappointed that new aircraft prices did not plummet after the statute of reposed legislation was passed in 1994.

Manufacturers, however, have said that they have seen little or no relief in their product liability insurance premiums. Now, that is no surprise. To anybody that has been involved in tort reform, that is the standard argument, as it was here. If you pass this bill, Mr. Senator, you are going to free the bar of—or free the industry from—these horrible plaintiffs lawyers and these rising insurance costs and premiums, which are driving us all out of business.

The number of lawsuits that are being filed and the cost of defense and these skyrocketing verdicts, all of which are not true today, and were not true in 1970, were not true in 1980, and were not true when GARA was passed.

Any responsible plaintiffs lawyer will tell you that a general aviation case is fantastically expensive to handle, it is very difficult, and, as the statistics show from the National Center of State Courts, that defendants win overwhelmingly from a percentage standpoint.

All of that was there before, all of these costs. What we have done now is passed a bill which has created a new cottage industry of lawyers who are trying to figure it out and driving legal

costs up. And we are filing motions for summary judgment on GARA and conducting discovery to try to have the Plaintiffs Bar—if you do take a case, and I would advise you to look very carefully at whether you want to take one or not even more closely than you look generally, all of that impacts on the system.

And last week I was fortunate enough to have an occasion to meet with Senator Brough from Louisiana who is just this Tuesday starting—or the Transportation Commerce Committee of the Senate is starting hearings on the tort reform package that is there now. And the first item to be discussed is passing a statute of repose on all products manufactured: tort reform, statute of repose, simultaneous, similar. So please, Mr. Wakefield, Mr. Yodice, and Ms. Humphrey from the Defense Bar, let us not talk about this as some great economic boon to an industry that made in many instances mediocre planes and had to pay the price for them.

MR. DONNELLY: Well, Kathy and Tom, I guess you would not want to respond to any of those comments, would you?

MR. WAKEFIELD: I would like to say a few things. First of all, I would like to say that strangely enough, we have had no lawsuits on products from 1987 through 1996 of a single-engine-aircraft type. Why? We did not make any airplanes in that time period, and for them to say on one side that we looked at the marketing elements and decided it was time to get back in the business and used that as a way of getting some relief for product liability is asinine.

We did not start in 1987, 1988, 1989, or 1990, but what we did do is say this industry is dying. No new single-engine piston aircraft are being manufactured. If you revitalize this industry by passing GARA, we will build those airplanes, and we have done that.

They said there was no relief in product liability premiums. That may be true in this sense, that product liability premiums for most of the manufacturers are for excess coverage. We have large deductibles. We are paying the first dollar ourselves. So we will get the benefit of first dollar coverage not this year, but five, six or ten years down the road as those claims develop or do not develop in each insurance year. The true payout on an insurance year is normally ten years.

When you say tort reform has nothing to do with economics, I totally disagree. We would not be building single engine piston aircraft and creating new jobs today if GARA had not been passed.

Russ Meyer said that for a number of years, and he was right. We did not start single-engine production again until GARA was passed. The jobs that we are creating now are jobs that only resulted from the passage of GARA.

MR. HOWIE: Dan, there is a saying in our part of the country that you can put colored feathers on a turkey all day and call it a peacock, but it is still a turkey.

If you look at what was going on in Wichita, there was a shift, and it was a significant shift because the profitable lines, the Citations, the Caravans, the King Airs, the Heavy—did they ever shut those down? No. What was going on at the time?

At the time that the general aviation market peaked for a while and then people started graduating to the next product line, the place where there was a much greater margin, they are going great guns on those during those years where product liability was so bad.

And we are saying, wait a minute. If it is so bad, how can they be devoting all of their time and energy into profitable lines, yet it be so bad in the single-engine line?

Well, what happened was they flooded the market. There was the downturn, as Charlie said. The investment tax credit went away. Fuel costs went up. The GI bill went away so that you have a fixed market, a finite number of pilots that you are trying to cater to, and they are trying—and they have a flood of airplanes that they have made.

We are going to have the same problem here in a few years. You are going to make 2000 airplanes. How many of those do you have presold? How many of those are you going to be able sell? AOPA, you sold out the pilots. You sold out the pilots.

AOPA is no more of a consumer organization representing the pilots' interests than the Republican party is on this issue. You got up there. Yes, you did it, but remember what John Baker wrote a few years ago. He said product liability is not the driving force behind the problems in Wichita, Kansas. It is this whole myriad, this complex issue of tax, economics, and it does not have anything to do with the law, but that is why it sounds good right now. It is in vogue to get some tort reform and we are going to get on board and get it while we can.

MR. DONNELLY: John Yodice, how can you sit there and not want to respond to that?

MR. YODICE: Thank you for the opportunity to respond.

MR. DONNELLY: You are certainly welcome.

MR. YODICE: First, I think it is kind of interesting that the debate has centered around things that I am not so sure are the proper concern of the Plaintiffs' Bar. I agree with my friend Bob that the proper concern is tort reform and are we accomplishing that tort reform. When I hear all this discussion about whether, in fact, prices have decreased, whether, in fact, there was a jobs crisis in—in Wichita or concern about exports—concern about the market and whether the product liability premiums of the manufacturers have decreased, then I take that as a diversion, a diversion away from the true issue. And the issue, as Bob has defined it, is whether we have, in fact, achieved product liability reform.

Now, with respect to having sold out our members, I can tell you that we are essentially a consumer organization, and the views we espouse are the views that have been expressed to us by our members. For example, it was probably in 1987 or 1988 that we conducted a symposium with our members on product liability. The result of that symposium was the consensus that federal legislation should be sought.

A year later we had a symposium on parts. We were having a crisis with obtaining parts for our aircraft, and the symposium very quickly turned into the concern about product liability, and it as well concluded that the proper remedy was federal legislation.

And we have been responsive to numerous telephone calls, numerous letters, from our members asking us to work for product liability reform. The only dissent among our members—340,000 members—more than one half of the active of pilot population in the United States, the owners of more than one half of the civil aircraft of the United States, all universally in favor of product liability reform, the only dissent is among our members who are plaintiffs counsel, and that is understandable.

And we understand their arguments. We find ourselves on both sides of this debate. When I get an opportunity, I would like to articulate that a little more precisely. But I am not so sure all of the discussion about all of these extraneous matters and whether, in fact, the law achieved the objectives that it sought is relevant. In fact, the objective was tort reform, at least as far as the AOPA is concerned.

MR. HVASS: I would like to respond to John and Kathy both and tell you what I see coming on the plaintiffs side of this debate now that the bill has been passed.

Down the fraud exceptions side, before you sue your case out, you have to have your facts, which means that we are going to be in the files of the FAA and filing pretrial discovery requests—or actually presuit discovery requests under basically, I guess, Federal Rule 29, which allows you to go forward and get discovery before trial.

What you are going to see on the cases that go to trial against the manufacturers under GARA is not a case that used to be negligence. It is going to be fraud. It is going to be a case for punitive damages and you are going to see some tremendous verdicts, similar to the 172 suit \$25 million verdict on the East Coast, because the proof is going to be there on some of these aircraft. Now, we have seen it in the MU-2. We have seen it in the Cessna 411, and I think we are going to see it in others.

The second thing you are going to see and you are going to hear John's group screaming in a few years, all of you plaintiffs lawyers and all of you defense lawyers better learn when you have to file your claims against the estate and how you go after a bankrupt corporation, because we are going to pass downstream, and we are doing it now. Just because somebody has \$100,000 per suit does not mean his estate gets to go home. We are going to tie them up. We are going to go after them. And that is where the liability is going to shift to get the widows and the children paid because those are our clients and the injured victims.

And what will happen is a war between AOPA and the Plaintiffs Bar and I think, ultimately back to the manufacturers and the mechanics and the FBOs, because we are not going to go home and see these people go uncompensated. And I think you are going to see that fight developing.

So you are going to see on one hand some cases go away if GARA bars them, but when the proof is there, you are going to see some real good trials, and where the proof is not there, you are going to see people who should be financially responsible being held to be financially responsible. I think that is what you are going to see in this field.

MR. DONNELLY: John or Kathy?

MS. HUMPHREY: You have just heard a shift from what we were hearing in the first twenty minutes, which was the argument that we need to be able to bring lawsuits in order to improve the product and improve the industry.

We are now hearing that we need to be able to bring these suits in order to recompense the widows and orphans. I will not

quarrel with whether only one of those is going on or whether both of those are going on, but it does illustrate that there is a predicate to some of the argument here that the ability to bring plaintiffs' claims against a manufacturer necessarily improves the product and improves the industry.

That is an assumption that underlies some of the arguments that you have heard here today by the Plaintiffs' Bar. I think there are some who would argue that the example of Japanese automobiles, which many feel are or at least were at one point in time far superior to, for example, American-made automobiles, belies that assumption. The Japanese obviously have nothing like the litigation system that exists here in this country, and yet, argue some, the products themselves were better because of reasons that had very little to do with the pressures of product liability litigation.

MR. DONNELLY: Do you think you would have upper torso restraints in general aviation aircraft today if there were not a Plaintiffs' Bar?

MS. HUMPHREY: I am not the right one to answer that question.

MR. PARKS: Let me respond to that. This same line was used last night with the last speaker. Mr. Benero was talking about plaintiffs' lawyers and ivory towers and how we are in this to make the industry successful and protect people.

And if that is the case in the aviation industry—for aviation lawyers on the plaintiffs' side, we failed miserably because with the product, we never could get Cessna to square away a problem they have fuelwise with the 210, never could get Beech to build a Baron that did not have a flat spin problem.

None of those things made any impact whatsoever on the industry and it made no impact on the Defense Bar. All the verdicts that were won against Beech and all of verdicts that were won against Cessna and all of the verdicts won against Piper on the Cheyenne never did a single, solitary thing to make them change those aircraft.

Basically, they are the same and they are the same today, and I sense with the technology that they are using at Cessna, the systems that they have got in them now are going to be basically the systems they had in them twenty-five or thirty years ago.

There was no problem with the Plaintiffs' Bar and there was no cause by the Plaintiffs' Bar in creating an economic situation

which caused the passage of GARA. That is nonsense, pure and simple. It was tort reform.

It was an attempt to get limited access that would reduce access to the courts, and that was the basis upon which the bill was passed, and that is what AOPA argued for. They argued that it was tort reform. John is quite correct, if that is what I hear him saying.

We want this bill passed. Why AOPA wanted tort reform is still a mystery to me, as Mr. Howie said, but that is what it was. And so this perceived notion about the plaintiffs' lawyers and their ivory towers gets back to, in my judgment, the basic question: what was the problem? Why did we have to pass the bill to start off with? What was the problem that caused this bill to be passed?

Is it because you had a mediocre product that you wanted to cut your responsibility off after eighteen years? Is that what it was? Because that is the only valid reason for passage of the bill. There is no other reason for it.

And nobody on the other side of the table wants to answer that question. Why did you have to get the bill passed? Why was it necessary? Was it the evil plaintiffs lawyers that were particularly responsible for it? I do not think so. What was the reason for it? They have not answered that question in the past. They did not answer it in congressional testimony before Congress and they have not answered it today.

MR. YODICE: I would like to take a shot at it.

MR. DONNELLY: Surely, John. I am just trying to restrain Tom here because he wants to answer that.

MR. YODICE: I think the answer is very clear; it is certainly very clear to AOPA. We are the consumers. As I suggested earlier, which some of you may not have heard, we are 340,000 individual aircraft owners and pilots. We are more than half of the active pilots in the country. We own more than half of the civil aircraft in this country. We are not at all in doubt that we pay for product liability costs in the prices we pay for aviation products, and we are not in doubt that very little of what we pay gets down to the victims.

We should talk about the victims because there has been a lot of discussion, not here today, but when we were fighting this battle, about the organizations—the trial lawyers and other types of organizations trying to protect the victims. The victims in a general aviation accident are the pilot, perhaps the pilot's

family, perhaps the pilot's friend, perhaps the pilot's guest. There are no strangers, no fare-paying passengers. We are the victims. We have two sides of this debate to concern ourselves about. We want a fair compensation system, yet we want the availability of products and we would like to have them at a reasonable price.

At the time that we first started this discussion, we heard testimony from Beech. I happened to be on the panel before Congress with the general counsel of Beech testifying that about one half of the price of a Beechcraft Bonanza aircraft—this is probably ten years ago—was for product liability. He also testified that they had done a study that about seventeen percent of the product liability cost got to the victim. There was a great deal of transactional cost. Now, to AOPA and to AOPA's members, this is not a very efficient system. If we are going to pay for the product liability cost, we would like it to be a more efficient system.

There were compromises. The manufacturers wanted a twelve-year statute proposed. We wanted the twenty years. We settled for eighteen.

We are not in doubt that there could be a problem with the manufacture or a problem with the design of an aircraft. But, in eighteen years we would reasonably expect that it would manifest itself. We do not have the dissatisfaction with older aviation products that the plaintiffs' counsel would lead you to believe.

We are still striving for that middle ground. We think the balance has been a little too far in favor of the Plaintiffs' Bar today. The statute of repose helps a little bit in the balancing of the situation.

I hope that explains why we thought the statute was necessary.

MR. DONNELLY: Well, I notice a lot of note taking on this side of the table and I think there is some indignation over AOPA's claiming to represent the victims of airplane crashes. Is that why you were getting so upset over here?

MR. HOWIE: No. It is more than that, because what the AOPA did is to sell out its members by allowing Wichita to ship the cost of accidental injury and death from the manufacturer to the operator and those that are involved in the maintenance and the operation of piloting the airplane.

Yes, they want tort reform, but were you explaining to your members that are out there trying to make a living and paying the outrageous costs to buy these airplanes that what we are really doing is letting them go home free, but if there is an acci-

dent, you know who is going to be on the line for all of that? It is going to be you, those of you who are blindly being lead by your AOPA membership.

I have never seen an *AOPA PILOT* have anything come out critical of a Wichita product. I read it as being product bashing, but there are well-known problems in these airplanes that have manifested themselves over a number of years. And other than a squib where they have a brief little survey of the accident reports from the NTSB or the FAA data, I have never seen anything else that is critical of the product, and I think there is a reason for it.

MR. YODICE: I would like to respond to that as well.

MR. DONNELLY: I would like to hear from Tom for a second because I do not think Tom is going to agree that they are turning out defective products that are killing people, do you, Tom?

MR. WAKEFIELD: No, we are not.

MR. DONNELLY: Okay. So why do we not respond?

MR. WAKEFIELD: I just wanted to make a response to the comment that we are only using twenty-five-year-old technology. I would say, first of all, I admit that we are using some twenty-five-year-old technology, maybe some of the technology that made the 172 one of the safest single-engine products ever, that gives it docile handling characteristics that make it easy to fly for pilots.

That technology is being used, and it is being used today just like it has been for the last twenty-five years. To say we are only using twenty-five-year-old technology is simply wrong. If you look at the product improvements, the 172 used to be a carbureted engine. It is not now; it is fuel injected. Improvements include dual vacuum pumps, epoxy corrosion-proofing, stainless steel control cables, wet wing fuel tanks giving more usable fuel, strobe lights, courtesy lights, Silver Crown avionics, auto panel with marker beacon voice activated intercom for every seat location, mode C. transponders with encoders, backlit instruments, non-glare glass on all instruments, central enunciation panel that provides warnings for low fuel levels, low vacuum, low oil pressure and low voltage, vertical adjustable and reclining front seats, energy absorbing seats, front and rear inertia reel shoulder harnesses, interior soundproofing, tri-level ventilation, right and left hinged side windows, and tinted plexiglass.

A lot of different things have gone into the 172 as a product line that are improvements that make it a safer product and an

easier product for people to fly in various conditions, and that technology is not twenty-five-year-old technology. That technology is here today and we are getting it from our vendors as well as from Cessna directly.

MR. HVASS: And if you wanted to buy your new 172 with wheel pants, they are going to charge you extra for it. If you want to get the instrument minimal panel, they are going to charge you extra for it and it is going to be forty knots slower than the Cirrus SR20, which is equipped with a ballistic recovery systems parachute that will hopefully get the airplane to the ground in a panic situation without going through the trees.

We have not seen improvements in the older aircraft. We are still having difficulties with the Barons flat spinning, and so we have not seen the product improvement. Cessna went through a recertification for the 172.

If you look at the older 172s, they did not have a shoulder harness in the rear seat even though you could get it in your car. That is where Bob says we failed miserably in getting aviation safety, and that is why we talk about a mediocre product.

Cessna's employment went from 3000 to 7500 building Citations, not building 172s. Beech has announced publicly that it has quit putting money into piston-engine development. They are spending no new money to improve the Bonanza or Baron line of continuing production, even though we have saved them \$70,000 to \$100,000 per airplane in insurance cost with the passage of GARA.

So we are not getting the effect of it. What we have done is said to the manufacturers, you get the free ride; the victims go elsewhere.

MR. DONNELLY: Well, we have about two to three minutes to go. Is there anybody in the audience who has any question he would like to ask a member of the panel? But before you ask the question, I just want to tell you that I have been using my influence with Tom here, and next year we are hopeful that we are going to have one of the new Cessna 182s here as a raffle prize rather than a mere trip on American Airlines.

A gentleman in the back there?

FROM THE FLOOR: I would like to ask a question of the Plaintiffs' Bar on the left side there. Cessna recently spent about a million and a half dollars defending a lawsuit by the near and dear Arthur Wolk on the crash of a 1946 Model 140. He claimed it was a products liability case of dangerous design.

How many of you guys have filed a lawsuit against General Motors for the design of the 1946 Buick?

MR. HVASS: Well, just a real quick response. If it was crashworthiness case, the technology we base those cases on and the writings we base those cases on come out of World War II with the piston-engine fighters. We go all the way back to the design studies in the '30s and the '40s where we could get 40-G cockpits in World War II fighters, but after the war nobody could figure out even how to put minimal crashworthiness into the aircraft.

MR. HOWIE: Let me suggest also that Cessna paid a million and a half dollars defending that case. They overspent, and they should have looked real close at their hole cards and how much they are paying their experts and how much they are paying the defense lawyers, because that is gross—that is gross overspending any way, any time, any place.

FROM THE FLOOR: You can thank Mr. Wolk for that.

MR. PARKS: No. You are always going to have those kind of cases, but that is the standard argument that was offered up is that, you know, the reason these planes are so expensive and the reason we cannot build planes is because we have been sued so many times and we have to pay these hellacious costs to defend these lawsuits. And that simply was not the fact then and it will not be the fact now.

Sure you are going to have a case that is going to be an aberration along the way one way or the other. I have had some that I have lost that I felt very strongly that I should have won, and Cessna or Beech walked out of the courtroom.

Those cases are going to happen for both sides. You never read about the plaintiffs' cases that go sour. You are only read about the McDonnells and the \$1.5 million spent defending the 1940-something-year-old airplane. That is just not the way the real world works and it is not the way this whole thing has worked with reference to this kind of legislation panel.

MR. DONNELLY: John?

MR. YODICE: Yes. There have been several references now to the fact that the manufacturers are not bringing these aircraft up to the state of art, but there has been no acknowledgement of the fact that product liability is a deterrent to the introduction of new technology into our aircraft. That is one point I wanted to make.

The other is there has been some concern expressed about the *AOPA PILOT* Magazine, which is our official publication, not providing the full story to our members about product liability, and I would like to correct that. In fact, I have a monthly column, and I gave over one of my columns to Arthur Wolk, who many of you know as a pretty renowned plaintiffs' attorney, to express the view of the Plaintiffs' Bar to our members. And he was allowed to do that without any editorial comment by me or anybody else on the editorial staff.

In addition, when this debate was really heated before the Congress, we ran a letter to the editor from the then President-Elect Bill Wagner of the Association of Trial Lawyers of America, who is an AOPA member, again expressing the views of the trial lawyers on tort reform to our members.

The trial lawyers represent us. I mean, they are not bad guys in our eyes. We just see an unbalanced system. We gave them an opportunity to present their side of the case. We listened to it, and in fact, made some changes to the proposed legislation as a result of their comments. We feel that we presented the whole picture to our members and that were being responsive to our members in our efforts to get this tort reform.

MR. DONNELLY: Thank you very much. We do not have an olive branch here this morning, which we had ordered. Apparently it is en route in a Cessna 210 that ran out of fuel on the way here. And that will, of course, be the subject of the next panel discussion on GARA hopefully next year. I would like to thank you for your attention.

Speeches

